

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16071 of the Washington International School, as amended, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 320.3) to allow the alteration and conversion of a school building into a 14-unit apartment house in an R-3 District at premises 2735 Olive Street, N.W. (Square 1215, Lot 806).

HEARING DATE: September 20, 1995
DECISION DATE: December 6, 1995

ORDER

PRELIMINARY MOTIONS:

The Keshet Israel Congregation (hereinafter referred to as "Keshet"), through counsel, and five neighboring residents in opposition (hereinafter referred to as "Opponent") through counsel filed motions for party status.

The applicant did not object to Opponents' motion. The applicant objected partially to party status for Keshet. Keshet based its Motion on two points. First, Keshet stated that it had an interest in buying the subject building. Second, Keshet's Motion claimed a broadly undefined adverse impact if the proposal were granted. The applicant's position was that Keshet did not meet the definition of a party with regard to the first basis of its Motion, because Keshet does not have either a specific right or a legally protected interest in purchasing the building. The applicant's position was that, as to this issue, Keshet should be treated as a person, and not as a party. The Board granted the requests by Opponents and by Keshet for party status.

Opponents also filed a Motion to Dismiss on two grounds. The first argument was that the apartment building will exceed the permitted 40-foot height and 3-story limit in the R-3 zone, and will therefore be a nonconforming structure and a nonconforming use. As such, additional area variance relief is required, because the fourth floor will be expanded by a dormer. The second basis for the Motion was that area variance relief should also be required, because the proposed lot is oddly configured in the form of an inverted "T" and a portion of the lot is less than 20 feet wide.

The applicant's expert witness in planning, zoning and the D.C. Zoning Regulations submitted memorandum concerning the lot width issue and the building height issue. The witness testified that both the zoning administrator and the Board of Zoning Adjustment have concluded on several occasions that there are a

number of different methods for measuring lot width for an irregularly shaped lot. Applying all three different methods used by the zoning administrator and the Board, the expert witness testified that the lot width in this case greatly exceeds the minimum lot width requirement. Based on this evidence and testimony, the Board denied the Motion to Dismiss as to lot width.

The applicant's expert witness also testified on the height measurement issue. He testified that the Zoning Regulations provide that when a property fronts on more than one street, any front may be used to determine the building height. The Board notes that in this case, N Street has the greatest amount of street frontage for the lot under consideration. The point of measurement is defined in the Zoning Regulations to be from the level of the curb opposite the middle of the front of the building, and the number of stories is to be counted from the point of measurement. A cellar is not counted when determining the number of stories. At the point of measurement, the lowest level of the apartment building will be a cellar, rather than a basement; therefore, the lowest level is not included in the number of stories. As such, the apartment building will be a 3-story building, and will measure 44 feet in height. As filed, the plans included the addition of a dormer at the third story. The dormer did not increase the building height nor increase the number of stories. The applicant's expert testified that, for these reasons, no additional variance relief is required.

The Opponents offered the testimony of an expert in architecture, who read the plans to indicate a ceiling height of 3 feet 6 inches above the adjacent finished grade at the northwest corner of the building. However, the Board notes that the plans also indicate a ceiling height of 3 feet 11 inches above the measuring point at the middle of the front of the building.

Based upon the above, the Board determined that the apartment building will measure 3 stories from the point of measurement. The Board also determined that the addition of the dormer at the third story would constitute an enlargement of a nonconforming structure, which would not comply with the requirements of Section 2001.3 of the Zoning Regulations. The Board ruled that, in order to proceed with the dormer as proposed, additional area variance relief would be required. The applicant therefore stipulated that the dormer would be removed from the plans, thereby eliminating the possible need for area variance relief. The number of units was also reduced from 15 to 14. Based upon the above, the Board denied the Motion to Dismiss as to the building height.

SUMMARY OF EVIDENCE:

1. The subject property 2735 Olive Street, N.W., is located in Square 1215 on the eastern edge of the Georgetown Historic District in Ward 2. Square 1215 is bounded to the east by 27th Street, to the west by 28th Street, to the south by Olive Street and to the north by N Street. The rear of the property has the address 2706 N Street, N.W.

2. Lot 806 of Square 1215, on which the old Phillips School building stands, contains 44,174 square feet of land area (about 1.01 acres). The applicant is proposing to use a portion of Lot 806, which will be referred to as the site, to develop with multi-family apartments.

3. The site contains approximately 15,854 square feet of land area and has a width of 95.5 feet along N Street and 20 feet along Olive Street.

4. The Phillips School building which was constructed in 1890 contains a first and second floor, a lower-level, and an attic. The building's gross floor area is 21,200 square feet. The front of the building, where the school's playground and parking lot are located, faces Olive Street. As proposed, an 84-foot long driveway would be constructed from Olive Street to the front of the building. The rear of the building is located along N Street. Two walkways to the front of the building are located along N Street.

5. The Georgetown Historic District in which the site is located primarily consists of residential development of which rowhouses are the predominant use. Lot 806 is surrounded by rowhouses, the Alexander Memorial Baptist Church, the Keshet Israel Congregation synagogue, and the Hotel Employees and Restaurant Employees International Union building.

6. The applicant is requesting zoning relief from the use provisions of the Zoning Regulations, Subsection 320.3, to allow the alteration and conversion of a school building into a 14-unit apartment house in an R-3 District.

7. An apartment house is not a permitted use in the R-3 District, the use is first permitted in the R-4 District. The conversion of a building to an apartment house is permitted in the R-4 District if the apartment units are provided with a minimum lot area of 900 square feet per apartment.

8. The Old Phillips School, which is located on the site, was used from 1890 to the mid-1950's as a public school. The use and the building was not converted to a public school administrative annex until 1969 when the Washington International School sought and received permission to use it as a school. On March 25,

1969, the Board of Zoning Adjustment approved the use of Lot 806 in Square 1215 for school purposes by the Washington International School. On August 25, 1969, the United States Congress conveyed the property to the Washington International School under Public Law 91-63. The Phillips School building has been used continuously for the last 26 years by the Washington International School.

9. The applicant proposes to convert the existing school building to an apartment house containing 15 apartment units. The remainder of Lot 806 would be subdivided for matter of right row dwellings, and is not a part of this application. During the preliminary motions, the applicant stipulated to elimination of a proposed dormer addition and a reduction to 14 apartment units in the building. During the hearing, the applicant's architect submitted a revised drawing for the units on the third story, reducing the number of units from three to two, reducing the total number of units to 14.

The units would be located in the building as follows:

ground, first and second floors -- 4 units each; the attic level -- 2 units. The applicant is requesting flexibility to combine units subject to tenant demand. The size of the units would range from 1,100 to 1,350 square feet. The plan also include 15 parking spaces, one parking space for each apartment unit plus one extra space.

10. Access to the proposed apartment building would be from Olive and N Streets. Vehicular and pedestrian entrances from Olive Street are proposed. The site's two existing pedestrian entrances from N Street would remain. The applicant is also proposing to provide access from N Street to the lower-level units by way of descending stairs. As proposed, most of the stairs and landing would be located in the public right-of-way. The applicant must obtain approval from the District of Columbia Department of Public Works to construct the proposed N Street stairs in the public space.

11. The applicant is proposing 15 parking spaces, two of which would be designated for physically-impaired persons. Ramps are proposed to provide accessibility for the physically-impaired from the parking spaces to the apartment house. In addition, easements are proposed which are required to provide access to the parking spaces as well as two-way traffic and parking maneuverability. The Office of Planning referred this project to DPW to review the proposal's impacts on the area relative to traffic and parking issues.

12. The elementary school building was originally built of red brick, with large windows, interior load bearing walls, dual

stairwells, and eight classrooms, one at each of the four corners of the building on the first and second stories. At the lowest level of the building, rooms and spaces originally intended for heating, storage and other purposes, have been converted by the Washington International School to classrooms, program, and academic support space. The top story was converted by the School to a multipurpose room by adding stairs for access. There is a north-south hallway at the lowest level of the building, with a central landing at each of the upper levels. There were separate boys' and girls' entrances on the sides of the building, at the lowest level. The building has no elevator, no central air conditioning system, high ceilings and was not designed for handicapped accessibility.

13. The applicant states that over 1,050 square feet of land area would be provided for each apartment and the school building on its own lot will meet all required regulations as to area and bulk.

14. The applicant, through his representative, testified that the 19th century Phillips School has outlived its useful life as a school building and is not readily adaptable as a modern educational institution for the 21st century. The building lacks adequate space for facilities such as computer labs, a laboratory and resource rooms; it also lacks space for functions such as before and after school programs and extended day care. The applicant testified further that the school's long-range goals can only be met by relocating to a new facility, with greater land area, that is not hampered by any physical shortcomings.

15. Ms. Mary Sherburne of Baruetta and Associates, testified on behalf of the applicant as an expert in real estate marketing and brokerage in the District of Columbia. Ms. Sherburne testified and submitted a report of her analysis of various adaptive reuses of the building, including uses permitted as a matter of right and by special exception in the R-3 zone district. She stated that renovation without total interior demolition would cost in the range of \$100-125 per square foot, in addition to the purchase of the land and building. Based upon these figures, the renovation cost alone would be in the range of \$2,120,000 to \$2,650,000. Ms. Sherburne noted that the proposed development includes matter of right residential use for much of the vacant ground, and that therefore residential use for the school building would also be desirable, given the cost to renovate, the neighborhood environment, and the increase in residential opportunities in Georgetown. She determined, based on a variety of factors, that the only viable market for the property was for residential use.

Ms. Sherburne testified that the building could not be feasibly converted to a single family dwelling, embassy residence, parsonage or vicarage, given the building's size, historic limita-

tions, physical layout, and cost of renovation. She testified that there is no market for school use, given the fact that the building is obsolete for that purpose, and that school buildings in the city are being sold for adaptive reuse, with no schools currently searching for such buildings for school use. She testified that a church facility is not feasible because many churches are moving to the suburbs, and those which are looking for space in the District are generally smaller congregations in the market seeking facilities for less than \$500,000. Given the historic preservation limitations inherent in the site, the amount of demolition required to obtain sanctuary and auditorium space would be a cost factor. She also analyzed various Community Based Residential Facilities, finding that the building is too large and too costly to renovate for such uses. Church programs run for the promotion of the social welfare of the community were not in the market for such space in Georgetown. A college or university typically seeks larger spaces which can combine educational programs and administrative functions in larger buildings than the subject site. Ms. Sherburne identified several similar properties which have been marketed for several years, and remain unsold. Finally, the cost to renovate the property for nonprofit office use would be prohibitive, given the tremendous availability of less expensive office space in the Georgetown market at present.

Ms. Sherburne testified that the contract price for the entire Washington International School site was \$3.6 million. She testified that the assessed value for the entire property, as reflected in the 1995 Lusk Real Estate Directory, is \$3,553,100. She also testified that the assessed value of the school lot and the school building (the property under consideration in this application) is \$1.71 million

16. Mr. Shalom Baranes of Shalom Baranes Associates, testified as an expert in architecture, planning and adaptive reuse of historic structures. He testified that the proposed apartment house use would be consistent with the character of the neighborhood. He stated that the character of the neighborhood is residential with dwellings as the predominant use. The commercial area of M Street is located to the south. Many of the dwellings in the immediate area are on lots that are smaller than the required 2,000 square feet for the R-3 zone. Therefore, the density of the area is higher than what the R-3 zone would normally allow. There is a 9-unit apartment building directly adjacent to the school building on the east. Mr. Baranes testified that the proposed apartment house use would be consistent with the character of the neighborhood.

Mr. Baranes testified that the residential use would eliminate the traffic condition created by 280 school children arriving and departing by cars within a short period of time during the morning and afternoon. Mr. Baranes concluded that the proposed residential

use will reinforce the character of the neighborhood, both from a historic preservation standpoint as well as from a use standpoint.

17. Mr. Baranes stated that due to its location in a historic district, demolition of the existing school building is for all practical purposes prohibited. The project was the subject of six reviews by the Old Georgetown Board (OGB) and the Commission of Fine Arts (CFA), as well as three reviews by the Historic Preservation Review Board (BPRB), and three meetings with ANC 2E. The OGB, CFA and HPRB have granted conceptual design approval for the project.

18. Mr. Baranes also testified that the property is unique in several respects. The building was built for a single purpose, and is bilaterally symmetrical, with bearing walls running across the interior in both directions, and around the perimeter. He testified that it is very difficult, without undertaking major structural alterations, to alter the layout of the building. He testified that the proposed apartment use requires minimal disruption to the existing structural elements of the building, and allows an apartment unit within each of the original classrooms in the building. This adaptive reuse can also be achieved without extensive modifications to the exterior of the building. In this instance, a new entrance on N Street has been approved by the Historic Preservation agencies.

19. Mr. Baranes also reviewed the uses permitted as a matter of right and by special exception in the R-3 zone, to determine appropriate reuses of the building. A stable, a farm, and a mass transit facility would not be appropriate uses for the building or for the neighborhood. The size and character of the building would make it inappropriate for a single family residence or for an embassy or clerical use. Likewise, the building is too large for a Community Based Residential Facility for up to 8 persons. A church or religious building would require a larger sanctuary space than any of the single classrooms in the building would provide. As such, a church would need to undertake fairly significant structural alterations for the masonry walls in order to create a sanctuary. While this may be technically achievable, it would be very expensive and would lead to the need for a public hearing before the Mayor's Agent for Historic Preservation. The D.C. Public School system has sold the property, and therefore does not need it for public school use. A child development center typically is located on one level. Given his experience, Mr. Baranes testified that a four level child development center would not work well in this structure. Based upon his experience, Mr. Baranes also testified that the building layout is too small and inflexible to accommodate a health care facility. Moreover, the building is an outmoded educational facility, and because of the inflexibility

of the floor plan arrangement, and for the reasons testified to by the school representatives, the building is not appropriate for renovation to a modern educational facility.

20. The applicant presented testimony by a residential real estate broker in the Georgetown area who concluded, based upon an analysis of the Washington condominium market, that the proposed apartment units as configured were very marketable. She also testified that larger, more expensive units in the subject building would not be marketable.

21. A representative of the applicant testified that during the past 2-1/2 years, the efforts of the school to sell the property and convert it to another use have been well known in the community through numerous public hearings and newspaper articles. The applicant also sent written notice of its intentions to all owners of property in the neighborhood, including Keshar. During that time, the applicant has not been approached by any matter of right user for the school building. One week prior to the public hearing in this case, the contract purchaser for the building was contacted by Keshar concerning the possibility of purchasing the property. Many of the members of Keshar are residents of the neighborhood, and were presumably aware of the school's activities over the past 2-1/2 years.

22. The Office of Planning (OP), by memorandum dated September 13, 1995, recommended conditional approval. The OP report noted while an apartment use is not permitted in the R-3 District, the conversion of a building to an apartment use is a permitted use in the R-4 District, if each apartment has a minimum lot area of 900 square feet. In this application, there is an excess of 1,050 square feet of land per apartment unit. OP indicated that the application meets all zoning requirements except for the proposed land use change from institutional to apartment use. OP said further, that an undue hardship exists in this area because the building is functionally obsolete, and residential development is the only practical alternative use of the site. OP stated in its report that if the application is approved, the project would have no adverse effect on the Zoning Regulations and Maps, since the proposed use would be less intense than the present one. OP recommended approval of the application with the following conditions:

- a. The easements, as proposed by the applicant, must be recorded prior to the issuance of a certificate of occupancy; and,
- b. Fifteen on-site parking spaces must be provided.

23. Advisory Neighborhood Commission (ANC) 2E, by letter dated September 6, 1995, opposed the application as follows:

a. The property is not unique. The applicant created an odd shaped lot in order to accomplish the goals of the development. This cannot now be used not to claim uniqueness.

b. Strict application would not bring undue hardship. Economic hardship, in this instance, is not an appropriate hardship in order to meet this standard.

c. There will be harm to the public if the variance is granted including a disruption to the neighborhood's ability to use the streets for parking, increased density, congestion and noise.

d. Concerns were also expressed regarding the design changes to the front of the historic building, the amount of parking provided for the apartment building, the adequacy of the driveway width and easements for vehicles and fire trucks, and the use of Zone 2 parking stickers by residents of the apartment building in order to park on the street.

24. The Department of Public Works (DPW), by memorandum dated September 20, 1995, indicated that there would be no problems with respect to capacity and level of service due to the proposal in the application. However, DPW noted that on-street parking is very tight as most of the existing residential development in the neighborhood has no off-street parking. DPW is of the opinion that to the extent that there would be no parking provisions for guests and visitors, the proposal may create parking problems in the neighboring streets.

25. Seventeen letters of support were submitted to the record in this case. Those letters indicated that the proposed apartment house is the best use for the school building, and that a commercial, institutional or nonresidential use would not be appropriate for the neighborhood; that apartment house use would be a creative recycling for the building; that the developer has received community support and been responsive to issues raised by the community; that the apartment house use would be in keeping with the residential character of the neighborhood; that apartment house use would serve to decrease traffic congestion during the week in this area; and that the proposal would strengthen the residential character of the area.

26. Keshner presented testimony through its Executive Vice President, who is also a member of the long-range planning committee. He testified about Keshner's interest in purchasing the

property, and stated that Kesher was not aware of the proposed sale of the school building until 7-10 days prior to the hearing. He testified about a preliminary analysis by an architect that interior load bearing walls in the building could be removed, with no substantial issues of complexity or economics. He testified that Kesher's architect did not review the plans for the building. He testified that several representatives of Kesher visited the subject building for less than one hour and determined that it was structurally feasible to convert the building to a synagogue at a preliminary estimated cost of between \$100 and \$150 per square foot. Kesher has not engaged a structural engineer and has not reviewed its proposal with CFA or HPRB. He testified that the proposal would require removal of both load bearing walls, and at least half of the floor at the second story, to create a balcony at that level, overlooking the first story. The balcony would be approximately one-third to one-half the size of the floor immediately below. The witness testified that Kesher's interest in acquiring the building would be contingent upon being able to make changes in the load bearing walls in order to use the property as a sanctuary for the synagogue. He testified that Kesher had not contacted a broker to assist in identifying properties for expansion by the synagogue. He testified that the majority of the members of Kesher, numbering 306, live in the immediate community, including members who live on the adjacent blocks to the subject property. He testified that Kesher would need to conduct fundraising to obtain the necessary funds to acquire and renovate the building.

27. Notwithstanding its allegations in its motion for party Status, Kesher presented no testimony concerning adverse impacts from the proposed apartment house use. Kesher's witness testified that its opposition is not based upon adverse impacts from the proposed development, and that if Kesher could not purchase the building, Kesher would have no opposition to the proposed apartment house use. The Board is concerned that Kesher used allegations of adverse impacts as a basis of its claim for party status and once party status was granted, Kesher then abandoned those arguments. The Board has thus accorded the appropriate weight to Kesher's opposition based upon the arguments raised by Kesher at the public hearing.

28. Opponents presented testimony by an architect, who stated that his measurements of the property indicate that the ceiling of the lowest level is four feet one inch above the level of the sidewalk at the middle of the front of the building. He also testified that, in his view, the structural load bearing walls in the building are almost universally flexible, and can be replaced and removed. Opponents' architect also testified that he was confident that the proposed synagogue use would be approved for historic preservation purposes. However, on cross-examination, he was unfamiliar with the standards that would be applied in the

historic preservation review of the demolition of the floors and load bearing walls on the interior. He testified that former school buildings of this type have been put to other uses, but was not able to identify any such uses which would be matter of right uses in this zone.

29. Opponents also presented testimony by a parking and traffic consultant, who conducted a parking study and reviewed the site plan for the project with respect to access parking and circulation. He testified that two parking spaces per apartment unit should be required in this situation. He based this conclusion upon his statement that vehicle ownership frequently exceeds one vehicle per apartment when there is more than one resident. He also introduced a study showing the availability of parking spaces in the immediate area on two evenings prior to the public hearing. He gave no testimony or evidence regarding parking availability during the day time. He testified that the apartment building can be well-served by use of Olive Street as the point of entrance. He stated that Olive Street is preferable to N Street because it terminates at 27th Street on one end and would not obstruct through travel. The Board notes that both Olive Street and N Street terminate at 27th Street.

30. Opponent's traffic witness testified that it is possible that a matter of right use of the building could have greater traffic impacts, especially a use that provides evening programs such as a school or religious use. He testified that other matter of right land uses may have an equal or greater impact on traffic and parking, particularly uses which have evening or weekend programs.

31. A representative of opponents testified that the adverse effects from the proposal relate to the parking issue, density, and to the addition of a front door on N Street. He testified as to his belief that residents of the building would use parking spaces on N Street, rather than the parking spaces on the subject site, and that this would diminish the amount of parking available for the community.

32. On rebuttal, the applicant's expert in zoning and planning testified that, in terms of building bulk, the proposed apartment house development is less dense than a matter of right row house development on the subject site would be. In terms of square feet of lot area per dwelling unit, the applicants proposal presents the equivalent of 1,056 square feet of land area per unit. In the subject square, more than 76 percent of the existing lots have less than 1,056 square feet. For these reasons, the proposal is substantially less dense than the surrounding residential development. In the six square block area bounded by 27th, 29th, M and Dumbarton Streets, 80 percent of the residential lots have land areas of less than 2,000 square feet, which is the minimum lot

size in the R-3 zone. He testified that there is no category of residential use anywhere in the Zoning Regulations in any zone at any density for residential uses that requires two parking spaces per unit. He testified that the parking regulations were substantially revised and amended in 1985, but the requirements for apartments did not change. Apartment house parking requirements range from one space per four units, to one space for each unit. In this case, one space per unit is provided, and no parking variance is required.

33. On rebuttal, the applicant presented expert testimony by a transportation and traffic consultant, who also submitted a report to the record. He studied the area bounded by N, P, 27th and 31st Streets. He testified that there are numerous bus routes within close proximity to the Metrobus system, which connect to the nearby Metrorail stations. This proximity to public transit has an impact on auto ownership and commuting patterns. He indicated that on-street parking is readily available during the day. During the evening, parking is tight, because most of the residents in the area have no off-street parking. He also testified that approximately 25 percent of households within the area have no automobiles, and that the average is slightly less than 1 vehicle per household in this area. He concluded that the amount of parking during the day in the area is reasonable, and that the parking plan submitted with the application should adequately serve the residents of the apartment building. At times additional demand is created by visitors, but that this will not create a significant adverse impact.

34. On rebuttal, the applicant's expert architect and historic preservation witness testified that, because of a recent case before by the Mayor's Agent for Historic Preservation, renovation projects in historic districts which involve interior demolition of existing walls and floors would be subject to a stricter standard of review, and would require a public hearing before the Mayor's Agency. Pursuant to the local historic preservation law, the applicant must demonstrate that the demolition is either a project of special merit, or that demolition is consistent with the purposes of the historic preservation law, or that denial of the application would result in economic hardship. He testified that no application has ever been granted on the basis of economic hardship, nor has a complete demolition been approved as being consistent with the purposes of the Historic Preservation Act. He testified that the Mayor's Agent process is very expensive, in terms of professional fees, and typically the Mayor's Agent hearing process takes over one year to complete.

35. The applicant's architect witness also testified on rebuttal concerning the plan proposed by Kesher to remove bearing walls and replace them with supporting columns. He testified that the building was designed to spread the weight of the building

across all of the load bearing walls, and that it is unknown whether there are sufficient footings to support a column or columns in lieu of a load bearing wall. He also testified that the issue of whether or not there is an entrance on N Street will have no impact on traffic into the building from the north side, because there will be entrances on the side of the building, accessible from N Street, if the N Street entrance is not built. He also testified on rebuttal that the 3 foot 11 inch measurement from the measuring point on N Street to the ceiling of the lowest level is a measurement of the proposed project, as depicted on the plans.

36. At the close of the public hearing, the Board left the record open for the parties to submit responses to the reports of the Department of Public Works and the Fire Department, briefs regarding the historic preservation issue concerning the Mayor's Agent, and briefs on the issue of nonconforming structure, and whether any additional zoning relief is required. Kesher and opponents were also given an opportunity to submit a written response to the Applicant's expert traffic witness report. In addition, both applicant and Kesher were requested to continue discussing the possibility of a sale of the school building to Kesher for synagogue use.

37. By reports filed with the Board on November 6, 1995, Kesher and the applicant reported to the Board on the status of the negotiations for purchase of the property by Kesher. Kesher's report indicated that it had offered to purchase the building, plus approximately 13,181 square feet of land area, plus a 20 foot wide, 100 foot long easement, for \$350,000. Kesher's position was that this offer disproves the applicant's claim that there is no market for the building other than for a residential apartment house use.

38. The applicant's November 6 report indicates that the assessed value of the entire Washington International School property is \$3,553,100, which includes an assessment of \$681,790 for the building, plus a land value of \$65 per square foot. Applying that land value to the area of the property under consideration in this application, the assessed value for the land and building together is \$1,712,287. Applying these figures to the building and area of land that Kesher has offered to purchase, the assessed value of that property would be \$1,538,555. That figure does not include the value of the easement area. The D.C. Code defines the assessed value of real property to be estimated market value of the property taking into account all factors which have a bearing on the market of the property including, but not limited to, zoning and government imposed restrictions. The Board notes that Kesher's offer represents less than 25 percent of the market value of the property. Moreover, the Board notes that, in the same square, the most recent sale of property recorded in the Lusk Real

Estate Directory was for \$319,000 for a property with one-sixteenth the size of the land area and one-fourteenth the size of the building area, that Keshner has proposed to buy for \$350,000.

39. By report dated November 29, 1995, the applicant's witness in planning, zoning and the D.C. Zoning Regulations indicated that the use variance is the only relief required in this application. There is no requirement for an area variance in order to extend the use variance to the top floor. The existing building is a nonconforming structure, but neither the present use nor the proposed use is a nonconforming use. The application complies with all of the nonconforming structure provisions of Chapter 20 of the Zoning Regulations. His report indicates that the issue of whether the building is 3 stories or 4 stories is immaterial, in light of the fact that the dormer addition has been removed from the plans. The building is already nonconforming as to height, and there is no difference in treatment if it were to be determined to be nonconforming in number of stories.

40. By report dated November 29, 1995, the applicant's planning and zoning witness submitted comments to the Department of Public Works report of September 20, 1995. His report indicates that the DPW report is consistent with the report submitted by the applicant's expert traffic and transportation witness with regard to traffic capacity. The Opponent's traffic consultant made no comments on that issue. All three traffic reports indicate that on-street parking supply is very tight at times during the evening. The DPW report indicates that the applicant will provide one parking space for each dwelling unit. The DPW report fails to point out that there is no residential parking requirement anywhere in the District for more than one parking space per dwelling unit. The DPW report fails to note that, pursuant to Section 2100.5 of the Zoning Regulations, no parking spaces are required for the proposed change of use to an apartment house. The applicant's report points out that the shortage of on-street parking cannot be traced to the proposed apartment house, but rather is caused by the single family dwelling units which surround the site and which for the most part do not themselves provide any off-street parking for residents or guests.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The 105-year old Phillips School building is located within the Georgetown Historic District. The proposed renovation and adaptive reuse of the building have been reviewed by the Old Georgetown Board, the Commission of Fine Arts, and the

Historic Preservation Review Board. Conceptual design approval has been granted by the historic preservation agencies.

2. The proposed use requires a use variance from the use provisions of Subsection 320.3 of the Zoning Regulations. No additions are proposed for the building. No other relief is necessary for the application.
3. The existing building is a 21,200 square foot school built for a single purpose. The building is obsolete and cannot be sufficiently renovated to be used as an up-to-date modern educational institution. The applicant proposes to convert the building, and 15,853.8 square feet of land area, to apartment house use. The remainder of the school property is proposed to be subdivided for matter of right row houses, and is not a part of this application.
4. The proposed 14-unit apartment house configuration is consistent with the density of other residential uses in the area. It is noted that the proposed use would be less than the majority of the residential uses in the subject square and the surrounding area.
5. The proposed apartment house conversion would be allowed as a matter of right in the R-4 District. Evidence submitted to the record reveals a number of other apartment buildings in the R-3 District in Georgetown, including a 9-unit building immediately adjacent to the subject site.
6. The main concerns of opponents were parking and the number of units in the building. The Board finds that the number of parking spaces provided is appropriate for the proposed use, and that to the extent that visitor parking during the evening is tight, this is an existing condition. The applicant's expert witness testified that the proposed use would not create a significant adverse impact on parking. One parking space would be provided for each dwelling unit, which is equal to the most restrictive parking requirements in the Zoning Regulations for single-family homes or apartments.
7. As to the concerns of Opponents on the number of units in the building, the Board finds that this is directly related to the number of parking spaces.

Based upon the evidence and testimony, the Board finds that the number of parking spaces proposed for the building is appropriate. The testimony indicated that the number of units, at the proposed unit size, would be very marketable in Georgetown. A reduction in the number of units would result in an increase of square footage per unit. The testimony of record indicates that larger units in this building would not be readily marketable. In any event, the Board finds that the impact on parking would not differ significantly if there were fewer units, because there is one parking space for each unit.

8. One parking space will be provided for each dwelling unit, which is equal to the most restrictive parking requirement for single family homes or apartments in the entire Zoning Regulations. The Board finds that there will be sufficient parking for visitors during the daytime and to the extent that parking is tight on the surrounding streets during the early evening, this will not create a significant adverse impact in the area. The Board has reviewed the expert analyses of the applicant's traffic consultant, DPW and the Opponent's traffic consultant, and finds that the weight of the evidence supports a finding that although parking on the street may be tight at times during the early evening, there will be no significant adverse impact on neighboring properties.
9. Kesher presented testimony only as to the proposed use of the building as a synagogue. Kesher offered no testimony regarding adverse impacts from the apartment house use, and testified that such use would be appropriate for the property if Kesher were unable to use the building for its purposes.
10. The Office of Planning report, as amended by the testimony at the public hearing, is appropriate, including the conditions recommended therein.
11. The Board is required to give great weight to the issues and concerns of the ANC which relate to the application. Based upon the evidence and testimony, the Board's response to the ANC is as follows:
 - a. The applicant has not claimed uniqueness of the property based upon the shape of the lot.

Rather, the uniqueness of the property is based upon the existence of the obsolete 19th century school building on the site, which is small by modern education standards.

- b. Through evidence and testimony, the applicant has demonstrated a hardship in that it cannot reasonably adapt the premises or find a tenant to produce a reasonable income for a use in conformance with the Zoning Regulations. The applicant has met the test for hardship set forth in the applicable case law from the D.C. Court of Appeals.
- c. Approval of the application will not disrupt the neighborhood's ability to use the streets for parking. The applicant is providing 1 parking space for each dwelling unit. There is no residential use in any zoning district in the city which requires more than 1 space per dwelling unit. The proposed density of the apartment house use will be less than that of the surrounding residential uses in the square and in the area. There will be less congestion associated with the proposed 14-unit apartment building than there is with the present school use, which produces between 400 vehicular trips to the area per day. Finally, the ANC has not substantiated, nor is there any evidence of record, to support, the allegation of increased noise in conjunction with the proposed use.
- d. The design changes to the front of the building to create an entrance on N Street have been reviewed extensively and approved in concept by the applicable historic preservation authorities.
- e. The Applicant has provided one parking space for each dwelling unit. There is no residential parking requirement anywhere in the District for more than one parking space per unit.
- f. The proposed driveways and easements meet the width requirements of the Zoning Regulations. Review of the project by the Fire Department will occur at the building permit stage.

- g. Given the evidence of tight on-street parking in the vicinity in the evening it is not reasonable to assume that an apartment resident would forego use of their parking space on the subject property, and instead seek to park on the street.
- 12. The Board finds that the proposal by Kesher to acquire the building, plus a portion of the site and an easement for another portion for \$350,000 would not result in a fair and reasonable return to the owner. Moreover, the Board finds that the testimony and evidence substantiates the applicant's position that the regulations preclude the use of the property for any conforming use with a fair and reasonable return arising out of the ownership thereof.
- 13. The Board finds that the proposed apartment building would be nonconforming as to height. The Board also finds that the proposed apartment building would not be nonconforming as to number of stories. However, as to the disagreement between the applicant and the opponents as to the number of stories, this issue is moot, because the applicant is not proposing any additions to the building.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that the applicant is seeking a variance from the use provisions of Subsection 320.3 to permit the alteration and conversion of the 105-year old Phillips School building into a 14-unit apartment house in an R-3 District. The granting of the use variance requires the applicant to meet the criteria set forth in Section 3107.2 of the Zoning Regulations by demonstrating that the property is affected by an extraordinary or exceptional condition; that the strict application of the Zoning Regulation will result in an undue hardship upon the owner. The Board must further find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps.

The Board concludes that the applicant has provided sufficient proof to establish an undue hardship inherent in the property. The existing 105-year old school building is functionally obsolete as a modern educational facility. The building is the only remaining former public school building entirely located in the R-3 District in the Georgetown Historic District. Pursuant to the ruling in

Clerics of St. Viator v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. 1974), the Board concludes that the existence of this obsolete structure on the property constitutes an extraordinary or exceptional situation or condition of the property.

The Board concludes that the applicant has demonstrated, through evidence and testimony, that the test of Palmer v. D.C. Board of Zoning Adjustment has been met. 287 A.2d 535, 542 (D.C. 1972). The applicant has shown that the Zoning Regulations preclude the use of the property in question for any purpose for which it is reasonably adapted. In other words, the premises cannot be put to any conforming use with a fair and reasonable return to the applicant.

The Board concludes that, based on the evidence and testimony of record, the requested variance can be granted without substantially impairing the intent, purpose and integrity of the zone plan or without substantial detriment to the public good.


The Board has accorded the report of ANC 2E the "great weight" to which it is entitled.

In the light of the foregoing, the Board **ORDERS** that the application be **GRANTED**.

VOTE: 5-0 (Susan Morgan Hinton, Maybelle Taylor Bennett, Angel F. Clarens and Laura M. Richards to grant; Craig Ellis to grant by absentee vote).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: _____

MAR 26 1997

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

BZA APPLICATION NO. 16071
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UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

16071ord/JN/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16071

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAR 26 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

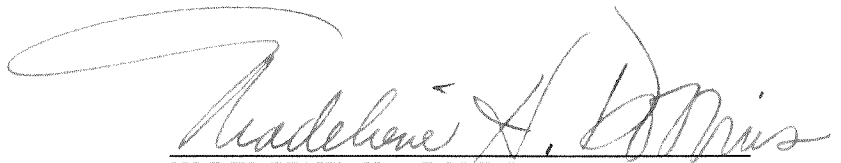
Christopher H. Collins, Esquire
Allison C. Prince, Esquire
Wilkes, Artis, Hedrick and Lane
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006

Anne-Marie Pierce
Washington International School
3100 Macomb Street, N.W.
Washington, D.C. 20008

Charles R. Braun, Esquire
3816 Windom Place, N.W.
Washington, D.C. 20016

Robin B. Hayes, Esquire
Stohlman, Beuchert, Egan and Smith
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Fran Goldstein, Chairperson
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007


MADELIENE H. DOBBINS
Director

Date: MAR 26 1997